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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,665	07/10/2003	Louis Pericard	11578.897	9949
7590 02/17/2006			EXAMINER	
KILGANNON & STEIDL 85 Pondfield Road Bronxville, NY 10708			HUYNH, KHOA D	
			ART UNIT	PAPER NUMBER
			3751	
DATE MAILED: 02/17/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,665

Applicant(s)

PERICARD, LOUIS

Examiner

Khoa D. Huynh

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5-16 is/are pending in the application.
- 4a) Of the above claim(s) 5-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 13-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, both the flexible bag and the bag as recited in claims 1 and 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 1 is objected to because of the following informalities: line 1, the recitation "Apparatus to assist" should be changed to read --An apparatus to assist--. Also in line 3, after the recitation "an outer propellant-storing container", the following insert should be made --having an interior container space--. Such insert provides clarity when reading the claim. Appropriate correction is strongly suggested.

3. Claim 2 is objected to because of the following informalities: line 1, the recitation "Apparatus to assist" should be changed to read --An apparatus to assist--. Also in line 3, after the recitation "an propellant container", the following insert should be made --having an interior container space--. Such insert provides clarity when reading the claim. Appropriate correction is strongly suggested.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 2 and 13-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 calls for "the flexible bag" in line 5 and again for "a bag" on line 6. It is unclear what structure applicant intends to cover when referring to "the bag" since applicant, in the instant disclosure, does not disclose that the apparatus includes two bags. Claim 13 depends on claim 1 and is likewise indefinite.

Claim 2 also calls for "a bag" in line 3 and again for "the (or said) flexible bag" on line 4 and line 11. It is unclear what structure applicant intends to cover when referring to "the bag" since applicant, in the instant disclosure, does not disclose that the apparatus includes two bags. Claims 14-16 depend on claim 2 and are likewise indefinite.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2 and 13-16 (as best understood) are rejected under 35 U.S.C. 102(b) as being anticipated by Prussin et al. (3806005).

Regarding claim 1, the Prussin et al. reference discloses an aerosol container. The container includes an outer container (120) having an interior container space formed between the outer container (120) and a flexible inner container or bag (154). The container also includes an aerosol valve (Fig. 12) having a valve stem (constituted by elements 174, 180, 170), a valve stem gasket (146), a valve housing (constituted by the portion having element 172, 168; the portion having element 142 formed in the outer side; and including the portion labeled 136 in Figs. 12 and 13) and the flexible bag (154) is mounted on said valve housing. As schematically shown in Figures 12 & 13, the valve stem includes an intermediate portion having an exterior frusto-conical annular surface

(constitute by the upper tapered portion of element 170), and the valve housing includes an interior frusto-conical annular surface (Figure 13 schematically shown that when element 170 engages element 172, the interior surface of element 172 deforms and thus creating the interior frusto-conical annular surface). As schematically shown in Figure 12, the valve, when assembled, acts as a single integral member. Furthermore, as schematically shown in Figure 12, the respective frusto-conical annular surfaces are separated from one another when the valve is not actuated, and the frusto-conical annular surfaces are in annular sealing contact (Fig. 13) with each other when the stem is deeply depressed for propellant pressure filling. The valve housing is characterized by the absence of a propellant-filling orifice through the housing sidewall axially below the valve stem gasket (as schematically shown in Fig. 12, the propellant-filling orifice 162 located outside and above the valve housing).

Regarding claim 13, as schematically shown in attached Figure 13, the valve stem exterior frusto-conical annular surface engages the valve housing interior frusto-conical annular surface at a position substantially separated from the bottom (constitute by the tip end of the element 170) of the valve stem.

Regarding claim 2, the Prussin et al. reference discloses an aerosol container. The container includes an outer container (120) having an interior container space formed between the outer container (120) and a flexible inner container or bag (154). The container also includes an aerosol valve (Fig. 12) having a valve stem (constitute by elements 174, 180, 170), a valve housing

(constitute by the portion having element 172, 168; the portion having element 142 formed in the outer side; and including the portion labeled 136 in Figs. 12 and 13), a gasket (146) mounted into the mounting cup (constitute by element located on top of the gasket 146), and the flexible bag (154) is sealing attached to said valve housing. As schematically shown in Figure 12, the gasket (146) surrounds the valve stem and has a top surface abutting a bottom surface of the mounting cup when the valve is closed. The valve stem includes a central dispensing channel (174) and lateral orifices (175) extending through the valve stem side wall into the channel. The valve stem further includes a portion with an exterior annular surface (constitute by the upper tapered portion of element 170), and the valve housing also includes an interior annular surface (172). The respective surfaces are in annular sealing contact (Fig. 13) with each other when the stem is deeply depressed for propellant pressure filling between the gasket top surface and the mounting cup bottom surface and around the outside of the gasket. The valve housing is characterized by the absence of a propellant-filling orifice through the housing sidewall axially below the valve stem gasket (as schematically shown in Fig. 12, the propellant-filling orifice 162 located outside and above the valve housing).

Regarding claim 14, as schematically shown in Figure 12, the valve, when assembled, acts as a single integral member. Furthermore, as schematically shown in Figures 12 & 13, the respective annular surfaces are separated from on

another when the valve is not actuated and only engages each other during propellant pressure filling.

Regarding claim 15, as schematically shown in attached Figure 13, the valve stem exterior annular surface engages the valve housing interior annular surface at a position substantially separated from the bottom (constituted by the tip end of the element 170) of the valve stem.

Regarding claim 16, the valve stem exterior annular surface has an exterior frusto-conical annular surface (constituted by the upper tapered portion of element 170), and the valve housing includes an interior frusto-conical annular surface (Figure 13 schematically shown that when element 170 engages element 172, the interior surface of element 172 deforms and thus creating the interior frusto-conical annular surface).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 2, 14 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by O'Connor et al. (2003/0089739).

Regarding claim 2, the O'Connor et al. reference discloses an aerosol container. The container includes an outer container (111) having an interior container space formed between the outer container (111) and an inner container or bag (120). The container also includes an aerosol valve (Fig. 11) having a valve stem (124), a valve housing (portion 127, 129), a gasket (136) mounted into

the mounting cup (113), and the bag (120) is sealing attached to said valve housing. As schematically shown in Figures 7 and 11, the gasket surrounds the valve stem and has a top surface abutting a bottom surface of the mounting cup when the valve is closed. The valve stem includes a central dispensing channel (Fig. 11) and lateral orifices (125) extending through the valve stem side wall into the channel. The valve stem further includes a portion (the portion above elements 125 where element 130 is positioned) with an exterior annular surface, and the valve housing also includes an interior annular surface (the surface located above element 129 where element 130 comes into contact with). The respective surfaces are in annular sealing contact (Fig. 11) with each other when the stem is deeply depressed for propellant pressure filling between the gasket top surface and the mounting cup bottom surface and around the outside of the gasket. The valve housing (as schematically shown in Fig. 11) is characterized by the absence of a propellant-filling orifice through the housing sidewall axially below the valve stem gasket.

Regarding claim 14, as schematically shown in Figure 11, the valve, when assembled, acts as a single integral member. Furthermore, as schematically shown in Figure 12, the respective annular surfaces are separated from one another when the valve is not actuated and only engages each other during propellant pressure filling (Fig. 11).

Regarding claim 15, as schematically shown in attached Figure 5, the valve stem exterior annular surface engages the valve housing interior annular surface at a position substantially separated from the bottom of the valve stem.

Response to Amendment

9. Applicant's amendment, filed on 12/22/2005, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

Response to Arguments

10. Applicant's arguments filed on 12/22/2005 with respect to the pending claims have been fully considered. However, such arguments are deemed not persuasive.

Applicant asserts that the Abplanalp reference does not teach the amended limitations that are "a rigid outer propellant-storing container" and "the flexible inner container". See Remarks section, pages 10-11.

Nevertheless, such assertions are now moot in view of the new grounds of rejections under 35 U.S.C. 102(b) as being anticipated by Prussin et al. as discussed supra.

Applicant also asserts that the O'Connor et al. reference is not relevant to the instant invention since the O'Connor et al. reference discloses an apparatus having separate products. See Remarks section, page 12, subparagraph (a). The examiner is respectfully traversed.

As stated in the above rejection, the O'Connor et al. reference discloses an apparatus to assist in pressure filling having all structural limitations as claimed. How

Art Unit: 3751

the product of O'Connor et al. dispensed is not a germane issue since the claims do not recite any limitation regarding the dispensing process of the contained product. As schematically shown in Figures 11 & 11A, the O'Connor et al. reference does show an apparatus that is capable of the being used to filling the outer container with a product while preventing the product from entering the inner bag and vice versa. Therefore, the O'Connor et al. reference does suggested applicant's invention as claimed.

Applicant also asserts that the O'Connor et al. reference does not teach frusto-conical surfaces for both the valve stem and the valve housing as recited in claim 13. See Remarks section, page 13, subparagraph (b). Nevertheless, such assertions are now moot because claim 13 is not rejected based upon O'Connor et al.

Applicant's amendment also necessitates other grounds of objection and rejection as discussed supra.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Khoa D. Huynh', is written over a horizontal line.

Khoa D. Huynh
Primary Examiner
Art Unit 3751

HK
02/15/2006